IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

Crl.MC.No. 3666 of 2003()

CC.1022/2001 of ADDL.CHIEF JUDICIAL MAGISTRATE, ERNAKULAM

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PETITIONER: ACCUSED

THOMAS K.CHANDY,
HOUSE NO.74/G
PANAMPILLY NAGAR, ERNAKULAM.

BY ADV. SRI.DEVAN RAMACHANDRAN

RESPONDENTS: COMPLAINANT AND STATE

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1. T.I.ANTONY, THAYANKERY HOUSE,
EDAPPALLY P.O., KOCHI - 24.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI AMJAD ALI
SRI.P.B.ASOKAN
SRI.SHERRY J. THOMAS

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 11/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NO.4675/2003 IN CRL.M.C.NO.3666/2003

CLOSED.

SD/- K.R.UDAYABHANU, JUDGE

11/10/2007

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K.R.UDAYABHANU, J.

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Crl.M.C.No.3666 of 2003-C

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Dated this the 11th day of October, 2007

O R D E R

The petitioner who is the accused in C.C.No.1022/2001 in the file of the Additional Chief Judicial Magistrate, Ernakulam, with respect to the offence under Section 138 of the Negotiable Instruments Act has sought for getting quashed the above proceedings specifically on the ground that the impugned cheque is invalid in view of the fact that the cheque is a cash cheque and yet crossed inscribing 'A/c Payee'.

2. It is contended by the counsel for the petitioner that the cash cheque cannot be crossed; and if crossed, the same can be encashed only through the account of the entity or person by name 'Cash'. He has also relied on the observations in the decisions reported in **Durga Shah Mohan Lal Bankers v.Governor General in Council and others [AIR (39) 1952 Allahabad 590], Michael Kuruvilla v.Joseph J.Kondody [1998 (1) KLT 384], M.George & Bros v.Cherian [1990 (1) KLT 133], Capital Syndicate v.Jameela [2003 (1) KLT 604], Gemini v. Chandran [2007 (2) KLT 439].**

3. On a perusal of the above decisions, I find that there is nothing therein to support the case set up by the petitioner. This Court in Michael Kuruvilla's case (op.cit) has specifically held that the dishonour of a cash cheque will attract an offence under Section 138 N.I.Act. When the cheque is crossed, the only consequence is that the proceeds will be put in the account of the payee or the person who presented the cheque. As pointed out by the counsel for the respondent/complainant Section 125 N.I.Act specifically mentions that when a cheque is uncrossed, the holder may cross it generally or specially. What is relevant with respect to the offence under Section 138 N.I.Act is only the fact that the cheque should have been issued towards discharge of a legally enforceable liability and that the cheque was dishonoured for want of funds in the account of the drawer. I find that there is no complications as contemplated in case a cash cheque is crossed. The rest of the contentions are matters that are to be sorted out at trial. The contention that the cash cheque if crossed becomes invalid is not supported by any authority. I find no merits in the contentions of the counsel for the petitioner/accused.

The Crl.M.C is dismissed.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.M.C.No.3666 of 2003-C

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O R D E R

11th October, 2007